

CHAPTER 14 — TERMINATION RULE AND REPORTING

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1400 Introduction

Federal law requires a “good-faith” termination of employment to qualify for a benefit distribution from a qualified retirement plan such as the WRS. Wis. Adm. Code ETF 10.08 defines a valid termination and applies to terminations of participating WRS employment that occur on or after July 1, 1998.

1401 Eligibility for Benefits - Minimum Break in Service

In order to be eligible for a WRS benefit, terminating employees must fulfill a **minimum break in service** as required by law and rule.

Wis. Adm. Code ETF 10.08 (2)(a) provides that “. . . no person may receive any retirement annuity, separation benefit or lump-sum payment from the Wisconsin retirement system without first terminating from his or her current participating employment with all participating employers.”

NOTE: See Chapter 15 on Waiver of Part-time Local Elected Official for exception.

Wis. Adm. Code ETF 10.08 (2)(c) further provides that in order to be eligible to receive a retirement annuity, separation benefit or lump-sum payment from the WRS, the employee must remain terminated from all WRS participating employment “. . . throughout a period beginning with the date of termination . . . and ending on the **latest of the following dates**:

- The day after the annuity effective date. . .
- The thirty-first day after the benefit application is received by ETF. . .
- The thirty-first day after termination of employment. . .”

1402 Conditions of Termination

Wis. Admin. Code ETF 10.08 defines the conditions a termination must meet to qualify for a WRS benefit. A valid termination meets **all** of the following conditions:

- The employee ceases to render compensable services.
- The employee and employer comply with the employer's policies for voluntary termination.
- As of the termination date, the employer has no "rights" to any future services to be rendered by the employee that meet the qualifications for WRS coverage for which compensation has or will be paid. This means the rule:
 - Prohibits an enforceable agreement as of the termination date for **any** future WRS compensable employment with the same WRS employer, regardless of whether that employment would meet WRS participation standards.
 - Prohibits an enforceable agreement as of the termination date for future employment with a different WRS employer that would meet WRS participation standards.

NOTE: This rule does not prohibit an agreement as of the termination date for future employment with a different WRS employer that does not meet WRS participation standards or prohibit an agreement prior to termination for purely voluntary future services for which no compensation has been or will be paid.

- The employee is treated consistently with the status of a former employee.
- The terminated employee has no authority to act as a representative of the employer or exercise any authority/control over employees of the employer except as provided above.
- The employer has paid the employee any accumulated benefits that are customarily paid to employees at the time of termination.

1403 Determining the Termination Date

The termination rule provides criteria for determining the termination date. The date reported to ETF should be the earliest of:

- The date an unpaid leave of absence expires when an employee fails to return to work following the leave.
- The date three years after an unpaid leave of absence began, except for military leave or union service leave.
- The date on which the employer discharges the employee.
- The date the employer determines that the employer-employee relationship terminates. Note: The effective date of the termination cannot be earlier than the date the employer notifies the employee of the termination.
- The last date for which the employee receives earnings for personal services rendered to, or on behalf of, the employer unless the employer has granted an unpaid leave of absence for a period of time after this date.

- The date the employee's voluntary resignation is effective as accepted by the employer, or if later, the date the employer receives the employee's notice of resignation. **Retroactive resignation is not permissible.**
- The date of the employee's death.

Refer to Chapters 8 and 9 for instructions on reporting terminations.

1404 Questions Concerning Valid Terminations

Questions concerning valid terminations, termination conditions and/or minimum breaks in service can be directed to the Employer Communication Center at (608) 264-7900.

1405 Frequently Asked Questions Concerning Valid Termination

Q.1 One of my employees terminated on June 19, 1998 (prior to the July 1, 1998 effective date of the rule) and began receiving a WRS benefit on June 22, 1998. At the time of termination, we already had signed a contract with the employee to have the employee return to work as a rehired annuitant on July 27, 1998 (after completing the minimum 30-day break in service). Will this signed contract invalidate the employee's June 22, 1998 termination?

A.1 An otherwise valid termination will not be determined invalid by ETF solely because a contract to return to work was in place prior to the termination if all other conditions for a valid termination are met and where the contract to return to work was signed prior to July 1, 1998, the effective date of the termination rule.

Q.2 One of my employees is an elected sheriff for Jones County and her term in office will expire December 31, 2004. In October 2004 the sheriff is reelected to another two-year term. On November 15, 2004, the sheriff plans to resign her position and terminate employment with Jones County. However, because she was reelected to another two-year term, she will return to work on January 1, 2005. Is the sheriff eligible to retire as of November 15, 2004 and return to work January 1, 2005, as a rehired annuitant?

A.2 No. For all terminations effective July 1, 1998 and later, the employee is not eligible for a retirement benefit if the employee has a right to compensable employment at the end of the day on which the employee terminates. The right to compensable employment includes a contract for future employment or election to a public office. In this case, reelection prior to termination is considered a contract for future employment and the November 15, 2004 termination date would be invalid. Therefore, the sheriff would not be eligible for a retirement benefit.

Q.3 In order to be eligible for a WRS benefit, an employee must meet the minimum 30-day break in service even if the employee returns to "non-eligible" employment with the same employer. Our school district covers only teachers under the WRS; our non-teaching employees are not eligible to participate in the WRS. In this situation, does a teacher who terminates and takes a WRS benefit have to complete the 30-day break in service before returning to work in a non-teaching position at the school district?

- A.3** The provisions of the termination rule do not apply to an employee who returns to a non-teaching position within a school district that participates in the WRS for their teacher positions only.
- Q.4** As the employer, we have had discussions with an employee who plans to terminate and take a WRS benefit about possibly returning to work. If the employee returns to work (after completing the minimum 30-day break in service) will the fact that these discussions took place invalidate the termination although a verbal or written contract was not in force at the time of termination?
- A.4** No. There is no provision in the new termination rule that prohibits the employer and employee from simply discussing the possibility of the employee returning to work.
- Q.5** One of my employees terminates on July 3, 2004. The employee's WRS benefit is effective July 4, 2004. Can the employee return to work for us for a couple of days prior to completing the minimum 30-day break in service without jeopardizing their benefit?
- A.5** No, the employee must complete the minimum 30-day break in service when returning to the same employer even if the employee only returns for a short period. In this situation, the employee's benefit would cease and the employer is required to re-enroll the employee in WRS as provided in Wis. Stat. § 40.22 (3m).
- Q.6** One of my employees terminated employment on June 26, 2004. The employee began receiving a WRS benefit on June 29, 2004. On July 2, 2004, we entered a written contract with the former employee for an August 1, 2004 return to work date. Does this contract entered into during the minimum 30-day break in service period invalidate the termination?
- A.6** No. Entering into contracts for return to work during the minimum break in service period is a "gray" area. The provisions of the new termination rule do not prohibit the employee and employer contracting during this time. ETF will not invalidate a termination for this condition alone, but the Department discourages employers and employees from entering contracts during this separation period.
- Q.7** An employee terminates employment, applies for a WRS benefit and returns to work for you as an independent contractor within 30 days of termination. Will this affect the employee's retirement benefit?
- A.7** Simply calling the employee an independent contractor does not mean that the employee meets the definition of an independent contractor. Refer to Subchapter 301 for information about the method used to determine whether a person is an independent contractor or an employee as defined by the IRS.

If the returning employee's employment arrangement meets the IRS tests for independent contractor status, the retirement benefit will not be impacted. If the returning employee's employment arrangement does not meet the IRS tests, the employee is ineligible for the retirement benefit. (See Q.6 above regarding entering into contracts within the 30 day minimum break in service period.)